

**APPLICANT:**  
**US Hospitality, LLC**

**REQUEST: Rezone 7.327 acres from  
R1 Urban Residential District to B3  
General Business District**

**HEARING DATE: September 26, 2007**

**BEFORE THE  
ZONING HEARING EXAMINER  
FOR HARFORD COUNTY  
BOARD OF APPEALS**

**Case No. 169**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** US Hospitality, LLC

**LOCATION:** 1015 Pulaski Highway (U.S. Route 40) at MD Route 152, Edgewood  
Tax Map: 65 / Grid: 3C / Parcel: 240  
First (1<sup>st</sup>) Election District

**ZONING:** B3 / General Business District and R1 / Urban Residential District

**REQUEST:** A rezoning, pursuant to Section 267-12A of the Harford County Code, to  
rezone 7.327 acres from a R1 District to a B3 District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The Applicant is the owner of a 14.51 acre parcel located at the southwestern corner of the intersection of U.S. Route 40 (Pulaski Highway) and MD Route 152, which is known as Magnolia Road at that location. The Applicant requests a rezoning of 7.327 out of its total 14.51 acres from its current R1 zone to B3.

The improvements on the parcel are fairly well known, being the former location of the Lakeside Motel. The property is distinguished by a large lake which was described at the hearing as being an old quarry, located close to the U.S. Route 40 and Magnolia Road intersection. Presently a Super 8 Motel and the old Lakeside Motel buildings are located on the parcel.

For the Applicant first testified Benjamin Brockway, who was offered an accepted as an expert environmental planner. Mr. Brockway explained that the property was acquired by the present owners in 2002 and, as noted above, is about 14 acres in size. The existing lake was identified by Mr. Brockway as an old quarry, with a depth of perhaps 100 feet. Parts of the lake are located very close to U.S. Route 40.

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The property is improved by a number of old buildings, all of which predate 1957. To the rear, or south of the property, are located a stream and associated wetlands. Much of this part of the property for which rezoning is requested is not useable due to these environmental features. Presently, the property has a split zoning, with roughly half of the property, that being to the northwest side of the property, being zoned B3, with the southeasterly one-half of the property being zoned R1. The site plan shows that a portion of the old Lakeside Motel building is actually located approximately one-half within the R1 zoned property, and one-half within B3 zoned property. The zoning line almost exactly splits the property in half, with the zoning line running in a roughly northeast-southwest direction across the property. Another portion of the Lakeside Motel is located wholly within the R1 portion of the property, together with a number of outbuildings.

Mr. Brockway explained the Applicant wishes to construct a new motel and renovate the existing motel. The Applicant has no plans to disturb the southeasterly, wooded and environmentally sensitive portion of the property. That portion will act as a buffer between the new and existing motels and the proposed residential development adjacent to it.

Mr. Brockway testified it will be difficult to develop the R1 portion of the property for residential uses. Access roads would be required to pass through the B3 portion of the property. It is not practical to construct roads to the south because of existing environmental features. Furthermore, Mr. Brockway believes that B3 development will have less of an impact on environmental features than would a residential development on the site. Existing forest cover to the south of the property will also help buffer the adjoining residential areas from the proposed commercial usage of the site.

Next for the Applicant testified Edward Steere, offered and accepted as an expert in planning and zoning with experience as a land planner. Mr. Steere explained that prior to 1957 the property was occupied by the Lakeside Motel and had split zoned B3/General Business and AG/Agricultural. In 1982 its agricultural zoning was changed to R1. This is the portion for which rezoning is requested. There were no changes in the zoning during the 1992 Comprehensive Zoning. In 1997, a Super 8 Motel was constructed on the front, or wholly B3 portion of the property.

The subject parcel is designated for high intensity use on the 2004 Master Land Use Plan. However, according to Mr. Steere, residential uses, particularly residential uses allowed in a R1 District, are not high intensity uses.

Mr. Steere points out that the older, existing motel was located in the R1 District. It was in existence at the time of the 1982 zoning which split zoned the property between R1 and B3. Mr. Steere notes that split zoning should generally be avoided, and should not have been applied to this parcel. The only practical access to the R1 portion of property to the southwest is through the motel site, being the existing B1 to the northeast side of the property. This is not a practical access for a residential development.

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Mr. Steere believes that Harford County made a mistake in 1997 in retaining the then existing zoning of the property. Harford County was obviously not aware of the development constraints of the southeasterly portion of the property, due to its sensitive environmental areas, and did not take into account and address the split-zoning of the parcel at that time. Furthermore, the zoning line quite obviously runs through the older, existing motel. If the County had known of this, it would have taken action to change the split zoning of the property to, in Mr. Steere's opinion, B3, which he believes is the most appropriate zone.

In summary, Mr. Steere stated that the Harford County Council in 1997 was not aware of: (1) the environmental constraints to the southeasterly side of the property; 2) the development constraints which these environmental features presented; 3) the split zoning of the property; 4) the zoning line actually running through the center of the then existing motel; and 5) that the Land Use Plan provides for high intensity use for this parcel. B3 is more consistent with the Land Use Plan. Failure to rezone the property to B3 in 1997 was a mistake.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune reiterated the recommendation of the staff that the requested rezoning be approved. The Staff Report states as follows:

*“The requested B3/General Business District zoning is appropriate for the subject property and is consistent with the 2004 Land Use Plan. The entire property is designated as High Intensity. The rezoning of the subject property will be in conformance with the Land Use Plan. Additionally, the rezoning of the R1/Urban Residential District portion of the subject property to B3/General Business District will bring the motel use in conformance with the Zoning Code and allow the redevelopment and expansion of the old motel. Therefore, the Department recommends that the entire property be rezoned to B3/General Business District. Rezoning the entire property to B3/General Business District would eliminate the current split zoning of the property and provide the most appropriate zoning configuration.”*

Mr. McClune further noted that the Planning Advisory Board recommended the requested change. The property was not an issue during the subsequently vetoed 2005 Comprehensive Zoning review.

No testimony or evidence was given in opposition.

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### **APPLICABLE LAW:**

Section 267-12 A. Zoning Reclassifications states:

“A. *Application initiated by property owner.*

(1) *Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:*

(a) *The location and size of the property.*

(b) *A title reference or a description by metes and bounds, courses and distance.*

(c) *The present zoning classification and the classification proposed by the applicant.*

(d) *The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.*

(e) *A statement of the grounds for the application, including:*

[1] *A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation.*

[2] *A statement as to whether there is an allegation of substantial change in the character of the neighborhood and, if so, a precise description of such alleged substantial change.*

(f) *A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.”*

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The Applicant requests a change in the zoning of the property. An initial presumption exists in the determination of whether any such request should be granted:

*“It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action.”* See Wakefield v. Kraft, 202 Md. 136 (1953).

It is a “rudimentary” principle of zoning review that there exists a:

*“. . . strong presumption of correctness of the original zoning and a comprehensive rezoning.”* See Stratakis v. Beauchamp, 268 Md. 643 (1973).

In considering an:

*“. . . application for reclassification, there must first be a finding of substantial change to the character of the neighborhood or a mistake in the comprehensive plan.”* See Hardesty v. Dunphy, 259 Md. 718 (1970).

Furthermore, case law dictates that legally sufficient evidence must exist to show “substantial change” in the character of the neighborhood, and not a “mere change” which may very well fail to rise to the level of being based upon legally sufficient evidence to justify a finding of change to the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989)

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The subject property is a quite unusual parcel. It was the location of what was known by many people in Harford County as the Lakeside Motel. The property was distinguished by a large lake which was readily visible from both Magnolia Road and Route 40, but is now almost completely hidden by trees and shrubs. The lake is actually an old quarry.

The Lakeside Motel was located on the property for many years. It appears, however, that in 1957 the property was given its original split zoning between B3 and AG. During 1982 the AG zoning was changed to R1. However, the line between the B3 and R1 zone was established as running directly through the existing Lakeside Motel. No explanation was given for such a mapping decision although, quite obviously, this would not appear to have been the best decision from a land planning perspective.

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The property is further distinguished by extensive environmental features to its southeast side, or behind the Lakeside Motel as one would view it from U.S. Route 40. Much of that area is also wooded and the Applicant asserts that much of it will continue to remain wooded.

The Applicants make a compelling argument for mistake. The property is, first of all, split zoned between B1 and R1 with no obvious explanation for such a mapping decision. Much of the currently zoned R1 property is unsuitable for development and, indeed, development may very well create more of a threat to sensitive environmental features than the limited commercial development proposed by the Applicant.

Furthermore, the Master Plan shows the property as high intensity. R1/Residential Development is not in conformity with the high intensity designation of the Master Plan.

Furthermore, and quite obviously, zoning lines should not generally split properties and should certainly not split existing improvements. Ignoring such physical features in the creation of zoning districts is an obvious mistake.

It is accordingly argued, and it is found to be a fact, that Harford County made a mistake in 1997 in continuing the split-zoning of the property in light of the above delineated factors. Quite obviously, these were factors of which the County should have been aware. To have ignored them was a mistake.

It is further found there will be no adverse impact if the requested zoning is granted. There is some proposed residential development to the south and west side of the property. However, existing environmental features will by necessity be retained which should act as a buffer between the commercial uses on the subject property and those residential uses. It was suggested at the hearing, and it would appear to be true, that the relatively low intense commercial development proposed for this site will have much less impact to the neighborhood than would R1 residential development.

It is further found, based on the testimony of record, that the most appropriate zoning of the property is B3, which will result in the overall parcel having a uniform zoning, with uniform potential uses.

In reviewing the application of the Limitations, Guides and Standards section of the Code, the requested use also results in no negative findings. Section 267-9I is addressed as follows:

- (1) *The number of persons living or working in the immediate area.*

The proposed rezoning should have little impact on the number of persons living or working in the area. Indeed, it should reduce the number of potential people living in the area due to the elimination of the R1 zoning district. The change to B3 should have little perceptible impact on the number of people working in the area.

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- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The use of the property for residential purposes would no doubt create more of a traffic impact than would the continued use of the parcels for commercial uses, particularly given the extensive wetlands and environmental features on-site.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The property is currently used as a location for motels. The proposal is continue to use the property for motels. Even if not used for motels in the future, the B3 zoning classification allows uses which should not conflict with surrounding uses or roadways, particularly given the buffering effect of the natural features on-site. It is noted that the parcel is located at the intersection of two heavily traveled roads.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such impact has been identified nor should result from the request for rezoning.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The area is serviced by the Harford County Sheriff's Office and water and sewer services are on-site.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The development is consistent with generally accepted planning and engineering principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

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- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed rezoning brings the property into compliance with the 2004 Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The property contains sensitive natural features. The proposed rezoning should help maintain those features, and should have less of an impact than would a residential use of the property.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Accordingly, it can be seen that the property fully complies with the considerations of Section 267-9I.

### **CONCLUSION:**

With no finding of adverse impact, and with the Applicant having shown a mistake in the 1997 rezoning of the property, and also having satisfactorily shown that the most appropriate zone for the property is B3, it is recommended that the requested rezoning be granted.

Date: October 22, 2007

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 19, 2007.**